

1.3.D.2 Capital Punishment Housing

I Policy Index:



Date Signed: 01/25/2021
Distribution: Public
Replaces Policy: 3D.5
Supersedes Policy Dated: 07/16/2020
Affected Units: All Institutions
Effective Date: 02/01/2021
Scheduled Revision Date: July 2021
Revision Number: 19
Office of Primary Responsibility: DOC Administration

II Policy:

The Department of Corrections (DOC) will provide a proper and suitable place within designated DOC institutions for the custody of inmates sentenced to death.

III Definitions:

Security Perimeter:

For the purposes of this policy only, fences, gates and walls (including the exterior wall of a building), that provide for the secure confinement of inmates within a facility. All entrances and exits of a security perimeter are under the control of staff, thereby preventing an inmate from leaving the facility unsupervised or without permission.

Senior Security Officer:

The Deputy Warden at the South Dakota State Penitentiary, Mike Durfee State Prison and South Dakota Women's Prison and respective ancillary units.

IV Procedures:

1. Establishment of Capital Punishment Housing Unit:

- A. The South Dakota State Penitentiary (SDSP) (includes the Jameson Annex) and the South Dakota Women's Prison (SDWP), will maintain a proper and suitable place within the facility to house maximum custody level inmates, including those inmates sentenced to death. The Warden shall ensure the facility is prepared to carry out the sentence of death, which may include ensuring the facility is equipped with the proper equipment, appliances and acceptable procedures for the infliction of the punishment (See SDCL § [23A-27A-33](#)).
 1. Male capital punishment inmates will be housed at SDSP. Female capital punishment inmates will be housed at SDWP.
 2. Prior to the execution date, female capital punishment inmates will be transported to SDSP for housing and execution.
 3. The respective Warden at SDSP and SDWP will designate the specific location within the maximum custody level area of each facility to house capital punishment inmates.

4. Any cell housing a capital punishment inmate will be distinctly marked to alert anyone in the area that the cell houses a capital punishment inmate.
- B. Inmates sentenced to death will be placed in capital punishment housing immediately upon admission to SDSP or SDWP.

2. Access to Capital Punishment Housing Inmates:

- A. Pursuant to SDCL [23A-27A-31.1](#), no one is allowed to access a capital punishment inmate without an order of the trial court, except Department of Corrections staff, the inmate's legal counsel, members of the clergy (if requested by the inmate) and approved members of the inmate's family (See DOC policy 1.5.D.1 [Inmate Visiting](#)).
 1. For the purposes of this policy only, members of the inmate's family will include the inmate's father, mother, stepfather, stepmother, brothers, sisters, stepbrothers, stepsisters, biological/legally adopted children, and spouse.
 2. Media representatives are not permitted into the facility to visit capital punishment inmates; however, capital punishment inmates may access members of the media by following the procedures set forth within DOC policies 1.5.D.3 [Inmate Correspondence](#) and 1.5.D.4 [Inmate Access to Telephones and Tablets](#).
 - a. Additional limitations necessary to maintain institutional order, safety and security may be imposed by the SDSP Warden.
 - b. Media requests for information about capital punishment housing or capital punishment inmates shall be directed to the DOC in accordance with the requirements set forth in DOC policy 1.1.A.4 [Relationship With News Media, Public and Other Agencies](#).

3. Capital Punishment Housing Restrictions:

- A. Capital punishment inmates may be approved to complete specified programs, as identified by the inmate's unit staff, with final approval from the respective Warden.
- B. Inmates awaiting sentence of death will be maintained on maximum custody level status.
 1. Capital punishment inmates will be housed one (1) inmate to a cell.
 2. Capital punishment inmates will not be employed in any capacity.
 3. Unless extenuating circumstances exist, which are first approved by the SDSP Warden, capital punishment inmates are not allowed direct contact with other inmates.
 4. Capital punishment inmates will have meals brought to them by staff and will eat all meals in their assigned cell.
 5. Capital punishment inmates will be issued clothing and bedding by staff.
- C. The staffing level, escort, restraint and dress requirements for capital punishment inmates (See DOC policy 1.3.A.7 [Inmate Transport & Escort](#) and [Attachment 1](#)) will be maintained at

all times when a capital punishment inmate is escorted from his/her cell and during all transports.

1. Escort of a capital punishment inmate within the facility will be scheduled with the Officer in Charge or staff of equal or higher rank and will be scheduled when contact with other inmates can be minimized.
 2. Whenever a capital punishment inmate is escorted outside of their assigned housing area/cell, all gates and doors within the area occupied by the inmate will be secured. Doors to areas where only DOC staff are present may remain unsecured.
 3. The senior security officer must be notified prior to a capital punishment inmate being transported outside of the secure perimeter. The senior security officer will in turn notify the Warden and Secretary of Corrections prior to the transport (See DOC policy 1.3.A.7 *Inmate Transport & Escort*).
- D. Once a capital punishment inmate is moved to the execution housing area, additional restrictions may be imposed by the Warden (See DOC policy 1.3.D.3 *Execution of an Inmate*).

4. Capital Punishment Programs and Services:

- A. The procedures in this section shall be consistent with SDCL § [23A-27A-31.1](#) and legitimate penological interests of the DOC.
- B. Capital punishment inmates normally receive a maximum of forty-five (45) minutes out of cell recreation each weekday.
 1. Telephones, tablets and kiosks will be available for use during the recreation period.
- C. Correspondence processed for capital punishment inmates is subject to DOC policy 1.5.D.3 *Inmate Correspondence*. The respective Warden may order a separate log be maintained for all capital punishment correspondence.
- D. Management of funds on behalf of capital punishment inmates is subject to DOC policy 1.1.B.2 *Inmate Accounts and Financial Responsibility*.
- E. Capital punishment inmates shall have access to their attorney or legal representative. Approved access includes telephone or tablet communication, legal/privileged correspondence and visits. Attorney visits will typically be held within the inmate's assigned housing unit, at times approved by the unit manager. Typically, attorney visits are approved to take place during regular staffing hours when unit staff is available.
 1. The senior security officer may approve attorney visits.
 2. During the attorney visit, the inmate will be in full restraints. Attorney visits may be no contact.
- F. Capital punishment inmates are eligible for commissary privileges (See DOC policy 1.2.E.1 *Inmate Commissary*). Commissary and property items may be limited to those items which the senior security officer has determined do not compromise security or safety. Capital punishment inmates may request access to certain craft items. Access must be approved by the senior security officer.

- G. Capital punishment inmates who are indigent may request indigent commissary, in accordance with DOC policy 1.2.E.1 [Inmate Commissary](#).
- H. Capital punishment inmates may access books from the facility library by request.
- I. Capital Punishment inmates requesting legal assistance or access to the courts are subject to the provisions within DOC policy 1.3.E.4 [Inmate Access to the Courts](#).
- J. Capital punishment inmates shall have access to the inmate grievance process (See DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#)).
- K. Inmates requesting attention for a specific health needs may send a request to Health Services (See DOH policy P-A-01 [Access to Care](#)) or Behavioral Health staff.
- L. Religious or cultural requests shall be addressed to the facility Cultural Activities Coordinator.
- M. Requests for educational materials will be made through education staff.

5. Capital Punishment Housing Visitation

- A. Capital punishment inmates are permitted a maximum of two weekday visits per week. Visits will be during designated visiting hours (See DOC policy 1.5.D.1 [Inmate Visiting](#)). All capital punishment visits will be no contact.
- B. Capital punishment inmates may have one weekend visit per month. The inmate must schedule the visit in advance through the unit manager. Weekend visits will count against the weekday visit allowance.
- C. Special visits must be approved in advance by the Warden or designee.
- D. Class II visitors will be limited to pre-approved family members.
 - 1. Visitors must call the facility control room in advance to confirm the visit.
 - 2. Capital punishment inmates must remain handcuffed during Class II visits. The waist belt may be removed, if approved by the senior security officer.
- E. Class III visitors of capital punishment inmates, who are not family members, must be pre-approved by the Warden.

V Related Directives:

SDCL [23A-27A-31.1](#) and [23A-27A-33](#).

DOC policy 1.1.A.4 – [Relationship With News Media, Public and Other Agencies](#)
DOC policy 1.1.B.2 – [Inmate Accounts and Financial Responsibility](#)
DOC policy 1.2.E.1 – [Inmate Commissary](#)
DOC policy 1.3.A.1 – [Unit Plans](#)
DOC policy 1.3.A.7 – [Inmate Transport & Escort](#)
DOC policy 1.3.C.4 – [Inmate Personal Property](#)
DOC policy 1.3.D.3 – [Execution of an Inmate](#)
DOC policy 1.3.E.2 – [Administrative Remedy for Inmates](#)
DOC policy 1.3.E.4 – [Inmate Access to the Courts](#)

DOC policy 1.5.D.1 – [Inmate Visiting](#)
DOC policy 1.5.D.3 – [Inmate Correspondence](#)
DOC policy 1.5.D.4 – [Inmate Access to Telephones and Tablets](#)
DOH policy P-A-01 – [Access to Care](#)

VI Revision Log:

July 2003: **Added** references to the DOC *Inmate Living Guide* and policy 1.4.B.2. **Reorganized** the section on Day-To-Day Guidelines. **Deleted** the reference to indoctrination services and programs.

August 2004: **Revised** the policy statement. **Combined** SDSP and SDWP OMs with this policy. **Added** references to policies 1.1.A.4, 1.1.B.2, 1.2.E.1, 1.3.A.1, 1.5.D.1 and DOH policy PA 01.

July 2005: **Added** reference to DOC policies 1.5.D.3 and 1.5.D.4. **Changed** "counselor" to "unit coordinator". **Clarified** that only male inmates can have a razor in their cell for shaving.

July 2006: **Revised** the definitions of Senior Security Officer and Security Perimeter. **Added** reference to DOC policy 1.3.D.3

August 2007: **Deleted** information regarding showers in the section on Capital Punishment Housing Sanitation.

July 2008: **Revised** formatting of policy in accordance with DOC policy 1.1.A.2. **Replaced** "23A-27A-16" with "23A-27A-31.1 throughout policy. **Replaced** "facility" with "penitentiary" staff, **added** "Department of Corrections staff", **deleted** "inmate's physician", **replaced** "a priest/minister or other recognized clergy if the inmate desires one" with "members of the clergy if requested by the inmate" and **added** language regarding clergy and inmates family members are subject to approval by the Warden before access to the inmate in ss (A of Access to Capital Punishment Housing Inmates) in accordance with SDCL 23A-27A-31.1. **Added** "DOC policy" when referencing policies in Related Directives section.

July 2009: **Revised** title of DOC policy 1.5.D.3 throughout policy to read Offender Correspondence. **Added** hyperlinks throughout policy.

July 2010: **Revised** formatting of Section 1. **Revised** title of DOC policy 1.4.B.2 and **added** DOC policy 1.4.B.14 to policy. **Added** reference to JPA in ss (A of Establishment of Capital Punishment Housing Unit).

July 2011: **Reviewed with no changes.**

February 2013: **Deleted** "Associate Warden" and **Replaced** with "Deputy Warden" in definition of "Senior Security officer" **Added** "biological/legally adopted" to Section 2 A. 1. **Added** "by the attorney" in Section 4 E. 3. **Deleted** "The only" and **Replaced** with "Limited" and **Deleted** "allowed to capital punishment housing inmates will be beadwork" and **Replaced** with "Will be allowed in capital punishment housing" in Section 5 C.

July 2013: **Reviewed** with no changes.

July 2014: **Deleted** "allowed to wear the same clothes as general population inmates" and **Replaced** with "will be issued designated clothing" in Section 3 B. 4.

July 2015: **Deleted** "Capital punishment inmates are not allowed outside recreation" in Section 4 B. **Added** "The senior security office will in turn notify the Warden or his/her designee and the Secretary of Corrections and provide all necessary information regarding the transport" to Section C. 3. c.

July 2016: **Reviewed** with no changes.

July 2017: **Added** 2. and 4. to Section 1 A. **Deleted** B. in Section 2. **Added** a. and b. to Section 2 A. 2. **Added** "which are first approved by the Warden" in Section 3 B. 2. **Added** 3 to Section 4 B. **Added** "The Warden may order a log be maintained for all incoming and outgoing correspondence. A separate log may be maintained for legal correspondence" in Section 4 C. **Added** "All visits between the capital punishment inmate and authorized visitors will be no contact" in Section 4 D. **Added** "Capital punishment inmates shall have access to their attorney and their authorized representatives through telephone communications, uncensored correspondence and visits" to Section 4 E. **Added** G. to Section 4. **Added** a. to Section 4 H. 2. **Added** 5. to Section 4 D. **Added** "or access to the courts" in Section 4 H. **Added** "Inmates may kite Behavioral Health Services to request behavioral health services" in Section 4 I. **Added** J. to Section 4.

July 2019: Added “tablets and kiosks” and Deleted 1 and 2. in Section 4. Deleted “A separate log may be maintained for legal correspondence” in Section 4 C. Deleted 1-3 in Section 4 H.

July 2020: Reviewed with no changes.

January 2021: Deleted “to transfer” from Section 1 B. Moved Section 4 E. to new Section 5 Capital Punishment Housing Visitation and Renumbered subsequent letters under Section 4. Added Section 5 E.

Mike Leidholt (original signature on file)

01/25/2021

Mike Leidholt, Secretary of Corrections

Date